Office of the Child and Youth Advocate/PEI

Submission to the PEI Legislative Assembly
Standing Committee on Education and Economic Growth

Bill 129
An Act to Amend the Early Learning and Childcare Act
(No.2)

Vulnerable Sector Checks – A Child Rights Lens

January 30, 2023

A) Introduction

I would like to begin by thanking the Committee for inviting me to speak with you today. This is a recognition of the unique statutory role that our Office plays in this province.

I also wish to express my appreciation to all members of the Legislature for unanimously passing the motion tabled by the Minister of Education and Lifelong Learning, referring Bill 129, An *Act to Amend the Early Learning and Child Care Act (No. 2)* to this Committee, so that more fully informed decisions can be made.

B) Preparation for this Presentation

In preparation for my presentation today, I identified some gaps and wanted to research a few different areas.

First, I reached out to other members of the Canadian Council of Child and Youth Advocates to learn more about experiences of other independent Child and Youth Advocate Offices across the country in relation to police compliance with requests to provide vulnerable sector checks for individuals associated with early learning and child care centres.

Through this outreach, I received responses from most other independent Child and Youth Advocates, or comparable Representatives and Ombudspersons, depending on the jurisdiction. Based on the information I have received from those offices, it is my understanding that the issue of police refusal to complete requested vulnerable sector checks for early learning and childcare employers has not been identified by those offices as a concern in any other Canadian jurisdiction.

Secondly, I wanted to know the content of early learning and childcare legislation, regulations and policies for criminal record checks and vulnerable sector checks in other Canadian jurisdictions. Here again, in addition to our own Office's research, we were aided by other independent Child and Youth Advocates and their equivalents in other Canadian jurisdictions. For the most part, although there are variations, there continue to be stringent criminal record and vulnerable sector check requirements that apply to all individuals working at or associated with early learning and childcare facilities.

The third thing I wanted to know is whether the courts have interpreted the phrase "*the position is one of trust or authority towards that child or vulnerable person* as set out in s. 6.3(3)(a) of the federal *Criminal Records Act.* As a result, I asked our Office's outside legal counsel to research this legal question. The response I received was that there has been no judicial interpretation of that provision of the federal *Criminal Records Act*. This

means there is no binding interpretation of that provision by any court that compels a narrow interpretation by the RCMP, although it appears that they have adopted some guiding principles of their own. Here I should also mention that the United Nations Convention on the Rights of the Child has application to federal legislation, such as the *Criminal Records Act* – and the central concern should, in my submission, be protecting young vulnerable children from risk of harm in early learning and childcare centres.

In view of our Office's research into these three areas, I find myself somewhat confused, and am left to ask the question - Why has the issue of vulnerable sector checks suddenly become a contentious issue here in PEI?

C) Position of Child and Youth Advocate Office

It is our Office's position that the Department of Education and Lifelong Learning should resist loosening the requirements for vulnerable sector checks in early learning and childcare centres, given the feedback we have received from other Child and Youth Advocates across the country, and given our Office's own research into comparable legislation, regulations and selected policies in other Canadian jurisdictions, including the absence of caselaw interpreting the relevant provisions of the federal *Criminal Records Act*.

It seems to me that any amendments to the *Early Learning and Childcare Act* or the *Regulations* would be premature at this stage without additional fact-finding on the part of the Department of Education and Lifelong Learning in two principal areas: first, is this a problem in other Canadian jurisdictions, and if so, how are the government departments and childcare centres in those jurisdictions addressing the problem?; and secondly, what is the actual scope of the problem in PEI – is it a problem because shareholders and directors of a corporation who operate a centre must undergo vulnerable sector checks, or is it a problem because administrative staff and persons working offsite must undergo vulnerable sector checks? As well, in how many instances is this a problem and are there any easy corrections? How can we develop a proper solution if we don't know the scope of the problem?

As I wrote to all three Parties at an earlier time:

> *"The elimination of vulnerable sector checks in early learning and childcare centres would, in my view, compromise the safety, protection and well-being of children.*
>
> *Staffing roles are fluid when it comes to the shifting needs of young children and there may be an urgent need for a staff person to step in and support and care for a young child.*

It is a slippery slope when protections for young children are chipped away and eliminated for our youngest and most vulnerable citizens."

The question of whether the individual is in a position of trust or authority should be a matter defined by the employer in the specific job description and in the Vulnerable Sector requisition form. Regardless of prescribed roles for childcare staff, there are times when an individual may have contact with a child due to unforeseen circumstances, such as the absence of other employees due to illness, or the need to attend to a medical emergency involving one of the children at the centre. There may also be individuals working on or off the premises, who may be predators and are using digital means (such as texting) to contact a child for luring or grooming purposes, or who have the ability to view the child's records. It is noteworthy, for example, that the Kids Help Phone website, available at https://kidshelpphone.ca/wp-content/uploads/Vulnerable-Sector-Check.pdf, states that "*a satisfactory result from* a vulnerable sector check is required to volunteer for the text service."

We have become all too aware of the risks to children in the digital age through online exploitation. A sexual predator can find out much information through accessing a child's records – such as the child's age and residence address, as well as the vulnerabilities of a particular child, including the child's health status, whether the child has a disability, whether the child is living with a single parent or is living in poverty.

Parents who place their young children in these facilities justifiably expect that every precaution will be taken by the facility to keep their children safe and out of harm's way in all respects.

There are also the principles of coherence of similar legislation and the non-retrogression of children's human rights already legally established, which should be taken into account in the consideration of any amendments to the *Early Learning and Child Care Act* or the *Regulations* under that Act, as well as the prior report by the Auditor-General in 2019.

It is our Office's further position that any consideration of legislative amendments to the *Early Learning and Child Care Act* or amendments to *Regulations* under that *Act* must be viewed through a child rights lens, rooted in the United Nations Convention on the Rights of the Child (the Convention). Accordingly, reference to the United Nations Convention on the Rights of the Child should, in my submission, be included in any future amendments to the *Early Learning and Child Care Act*. There is also the principle of non-retrogression in constitutional and human rights law - which means, in this context, that once the government has enacted safeguards in law that respect children's human rights to protection from all forms of sexual offences in early learning and child-care centres,

government cannot retreat from that position and allow those rights to regress or erode altogether.

D) Vulnerable Sector Checks through a Child Rights Lens

The Convention is the most recognized human rights treaty in the world, having been ratified by 196 countries to protect and promote the human rights of children and youth from birth to age 18 years around the globe.

When Canada ratified the Convention in December 1991, compliance with the Convention became a requirement for all levels of government across the country, including all provincial and territorial governments.

In theory, every five years, but usually longer, Canada, as a ratifying nation, must report on behalf of the federal, provincial and territorial governments, to the United Nations Committee on the Rights of the Child, located in Geneva, and demonstrate how Canada is ensuring compliance with all the provisions of the Convention.

During my employment with UNICEF Canada as Chief Policy Advisor, I had the opportunity to write a chapter for the Ontario Association of Children's Aid Societies Journal, vol. 59, 2015, called "*Ensuring Children's Well-Being: Analyzing Policies and Practices through a Child Rights Lens*" with my colleague, Pat Convery, who at the time was Executive Director for the Adoption Council of Ontario. In that article, available at https://www.oacas.org/pubs/oacas/journal/2015/Winter/OACAS%20Journal%20Volume%2059%20No%201.pdf, we wrote the following:

"Children need this [Convention] special focus for many reasons:

- *Children are particularly vulnerable by virtue of their developmental stage and dependence on adults.*

- *Children can be disproportionately affected by adverse conditions. For example, the adverse impacts of poverty in a child's early years can be much greater than the effects of poverty in adulthood.*

- *As non-voting citizens, children do not have the same opportunities as adults to influence or complain about public policy; instead, they must rely on adults to advocate for them.*

- *Children are a significant segment of the population and are more affected by the action—or inaction—of government than any other group.*

- *There is no such thing as a child-neutral policy. Almost every area of government policy affects children to some degree.*

- *Children are also among the heaviest users of public services, such as education, health, childcare, and youth services. As a result, children can suffer the most from the fragmentation of public policy and services, or from policies or services that have unintended consequences."*

E) Young Children as Rights Holders

When considering the question of vulnerable sector checks in early learning and childcare centres, in either legislation or Regulations, it is important to remember that young children are to be regarded as holders of all the rights set out in the Convention. This principle was made clear by the UN Committee on the Rights of the Child, in its General Comment No. 7 (2005) on *Implementing Child Rights in Early Childhood*, available at https://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/GeneralComment7Rev1.pdf:

> *"3.* ***Young children are rights holders.*** *The Convention on the Rights of the Child defines a child as 'every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier (art. 1). Consequently, young children are holders of all the rights enshrined in the Convention. They are entitled to special protection measures and, in accordance with their evolving capacities, the progressive exercise of their rights. The Committee is concerned that in implementing their obligations under the Convention, States parties have not given sufficient attention to young children as rights holders and to the laws, policies and programmes required to realize their rights during this distinct phase of their childhood. The Committee reaffirms that the Convention on the Rights of the Child is to be applied holistically in early childhood, taking account of the principle of the universality, indivisibility and interdependence of all human rights."*

F) Rights of young children Impacted by the question of vulnerable sector searches

The Convention requires that all levels of government consider potential impacts on children's rights, intentional and unintentional, direct and indirect, short-term and long-term, in all legislation, regulations, policies, programs and practices. This is where the process of a Child Rights Impact Assessment (CRIA) can be beneficial.

In my submission, there are various Convention rights potentially impacted by proposed amendments to the *Early Learning and Child Care Act* or the *Regulations* in relation to Vulnerable Sector Checks, directly relevant to the obligation of government to ensure the health, safety and well-being of young children attending early learning and childcare centres. Those potentially impacted Convention rights are listed as follows:

Article 19(1) of the Convention places an obligation on governments to "*take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s) legal guardian(s) or any other person who has the care of the child.*"

Article 34(1) of the Convention places an obligation on governments to "*undertake to protect the child from all forms of sexual exploitation and sexual abuse*", including "*measures to prevent the inducement or coercion of a child to engage in any unlawful sexual activity*."

Article 36 of the Convention places an obligation on governments to "*protect the child against all other forms of exploitation prejudicial to any aspect of the child's welfare*."

Article 3(1) of the Convention states that "*in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration*."

Article 3(3) of the Convention places an obligation on governments to "ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision."

Article 18(3) of the Convention places an obligation on governments to "*take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible*."

Article 6(2) of the Convention places an obligation on governments to "*ensure to the maximum extent possible the survival and development of the child*."

Article 2(2) of the Convention places an obligation on governments to **"***take all appropriate measures to ensure that the child is protected against all forms of*

*discrimination or punishment on the basis of status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members***."**

Article 12(1) of the Convention places an obligation on governments to "*assure to the child who is capable of forming his or own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance the age and age and maturity of the child.*" This right includes newborn, young children and children who, developmentally, are not able to communicate on their own behalf.

Article 24(1) of the Convention places an obligation on governments to "*recognize the right of the child to the enjoyment of the highest attainable standard of health*…"

Article 28(1) of the Convention places an obligation on governments to "*recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity*…"

G) Auditor-General's Report

As additional contextual information for the Committee's consideration, in 2019, in accordance with the PEI *Audit Act,* the Auditor General for Prince Edward Island, presented her Annual Report to the Legislative Assembly, which included an examination of the monitoring and licensing of early learning and childcare centres. In her report, at p. 13, available at https://www.assembly.pe.ca/sites/www.assembly.pe.ca/files/2019-AG-ar.pdf, specific to criminal record and vulnerable sector checks, the Auditor General noted:

> *"**2.32** Inspectors asked operators for criminal record and vulnerable sector checks for every staff member at the centre as required by legislation. These screening documents are a key control used to verify that staff are not a potential threat to the well-being of children within their care. At seven of the eight locations we observed, operators could not provide inspectors with appropriate screening documentation for all staff at the time of inspection. In all seven of these cases, the specific requirement was marked as unsatisfactory; however, in four of these, the centre was still issued an overall satisfactory inspection result."*

While I appreciate that the Department of Education and Lifelong Learning may have implemented corrective action on the recommendations of the Auditor General that resulted from this non-compliance finding, I raise as a consideration - that if there had been concerns expressed about non-compliance with protective measures taken to

ensure the safety and well-being of very young children in 2019, caution should, once again, be exercised by the Department of Education and Lifelong Learning, before agreeing to ease vulnerable sector check requirements for early learning and child care centres.

H) Potential Inconsistencies and Problem of Coherence – *Private Schools Act*

It is a concern that curtailing the rights of children through the loosening of requirements of protective vulnerable sector checks within one child-serving government department can set up inconsistencies in other child-serving government departments - and even in different child-serving sectors within the same government department.

Amendments affecting the provision of vulnerable sector checks in relation to children in PEI should therefore not be seen in isolation, but as having precedent-setting reverberations. A case in point is the *Private Schools Act*, which, like the *Early Learning and Child Care Act*, falls under the jurisdiction of the Department of Education and Lifelong Learning. For example, when reviewing the provisions in the *Private Schools Act* and the *Regulations* under that Act, in concert with the provisions of Bill No. 129, there is the potential for inconsistencies in the areas of: the time within which the statement of the results of the vulnerable sector search must be completed; the need for the submission of the statement of results of the completed vulnerable sector search before commencing employment or the provision of services; and the definition of an "associated person"

As an initial point of observation, s. 5 of the *Private Schools Act* requires the following criminal record and vulnerable sector searches for instructors in private schools:

5. "Requirements, Instructors

(1) The operator of a private school shall ensure that each instructor at the private school

(a) is at least 18 years of age;

(b) holds the academic qualifications required by the regulations; and

(c) provides to the operator a criminal record check and vulnerable sector search dated not earlier than six months prior to the date it is provided

> *(i) within eight weeks of commencing employment at the private school, and*
>
> *(ii) at least every three years during the instructor's employment at the private school.*

Idem

2) The operator of a private school shall ensure that no instructor is permitted unsupervised access to students unless

(a) the instructor has complied with clause (1)(c); and

(b) based on the results of the criminal record check and the vulnerable sector search, the operator concludes that there are no reasonable grounds to believe that the instructor may endanger the health, safety or well-being of the students."

Section 3(g) of the *Regulations* under the *Private Schools Act* then requires as part of an application for registration as a private school:

"(g) a criminal record check and vulnerable sector search respecting the applicant and persons deemed to be associated with the applicant under subsection 4(6) of the Act, dated not earlier than six months prior to the date of the application."

Additionally, section 4(6) of the *Private Schools Act* describes a "person associated" as follows:

Person associated

(6) For the purposes of clause (5)(c), an individual is deemed to be associated with an applicant if the individual

(a) resides in premises in which the proposed private school will be operated;

(b) is a partner of the applicant, if the applicant is applying to register the private school on behalf of the partnership; or

(c) is a shareholder or director of the corporation, if the applicant is the corporation or a partnership that includes the corporation."

l) *Criminal Records Act* (Canada)

In 2000, the *Criminal Records Act* of Canada, a federal law, was amended to include legislative authority for police services to conduct a query to protect children and other vulnerable persons called a Vulnerable Sector Check. This amendment was passed in the House of Commons to provide authority for police services to access a segregated data bank that lists individuals residing in Canada who have been convicted of a sexual offence, have been held accountable in a court of law and convicted, have served their sentence and any related parole/probation associated with the conviction, waited the

mandatory ten years with no other related charges, and applied to the Canadian government for a record suspension, which is commonly known as a pardon.

The relevant subsections of Section 6.3 of the *Criminal Records Act* state as follows:

"Definition of vulnerable person

> ***6.3 (1)*** *In this section,* **vulnerable person** *means a person who, because of his or her age, a disability or other circumstances, whether temporary or permanent,*
>
> > ***(a)*** *is in a position of dependency on others; or*
> >
> > ***(b)*** *is otherwise at a greater risk than the general population of being harmed by a person in a position of trust or authority towards them.*
>
> ***Notation of records***
>
> ***(2)*** *The Commissioner shall make, in the automated criminal conviction records retrieval system maintained by the Royal Canadian Mounted Police, a notation enabling a member of a police force or other authorized body to determine whether there is a record of an individual's conviction for an offence listed in Schedule 2 in respect of which a record suspension has been ordered.*
>
> ***Verification***
>
> ***(3)*** *At the request of any person or organization responsible for the well-being of a child or vulnerable person and to whom or to which an application is made for a paid or volunteer position, a member of a police force or other authorized body shall verify whether the applicant is the subject of a notation made in accordance with subsection (2) if*
>
> > ***(a)*** *the position is one of trust or authority towards that child or vulnerable person; and*
> >
> > ***(b)*** *the applicant has consented in writing to the verification.*
>
> ***Unauthorized use***
>
> ***(4)*** *Except as authorized by subsection (3), no person shall verify whether a person is the subject of a notation made in accordance with subsection (2)."*

Here, it is important to note that there appears to be no caselaw interpreting the meaning of "the position is one of trust or authority towards that child or vulnerable person", as set out in the federal *Criminal Records Act*. This means that there is room for discretion, and the paramount concern should be protecting young vulnerable children in early learning and childcare centres from risk of harm. As well, the phrase in the *Criminal Records Act* says "trust **or** authority" and not "trust **and** authority". This would suggest that the position

may require some level of authority, but not necessarily on a regular basis, to have actual or potential contact with children in exceptional circumstances, as set out in a Job Description, but does not necessarily require a relationship of trust between children and the associated person.

J) Analysis of Bill No. 129, *An act to Amend the Early Learning and Childcare Act (No. 2)*

As I have said, it is our Office's position that it would be premature to amend either the *Early Learning and Child Care Act* or the *Regulations* under that Act. There should be additional fact-finding in order to understand more fully what is occurring in other jurisdictions and the actual scope of the problem in PEI. Having said that, I wish to acknowledge the work that has gone into developing and introducing Bill No. 129, *An Act to Amend the Early Learning and Child Care Act (No. 2)* - and out of deference to those efforts, as well as the work of this Committee, I will make some specific comments, which I hope will be helpful to this Committee in its consideration of Bill No. 129.

As a general observation, while Bill No. 129 is, in my view, an honest effort to find a middle path and is a Bill that contains some positive features, it remains too much of a compromise that could seriously lessen the protections for infants, toddlers and young children attending early learning and childcare centres in PEI.

i. Positive Features of Bill No. 129

In my submission, the positive features of Bill No. 129 are as follows:

a) Unlike the *Regulations*, which provide that a statement of the results of a criminal record check and a vulnerable sector search must be dated "*not earlier than six months prior to the date of the application [for a license or a license renewal*]" (see s. 2(2)(e) and 3(1)(b)), that time period is reduced in Bill No. 129 to "*not earlier than one month prior to the date of the application [for a license or a license renewal]*" (see s. 2(2)(a) and 3(2)(a)).

Rationale: This reduction of time from six months to one month provides an additional measure of protection to young children, as there is the possibility of a criminal conviction or pardon occurring in the 6-month period before the application is submitted.

b) Unlike the *Regulations*, which are silent on the matter of when the individual can begin providing services at a facility, Bill No. 129 specifies that the individual must provide the operator with the criminal record and vulnerable sector checks "*before commencing to provide services at the licensed centre"* (see s. 4)

Rationale: This requirement once again provides additional protection, as there could be a heightened risk to the children at the facility when a staff member is given a prescribed grace period after the commencement of employment or provision of services to provide criminal record and vulnerable sector checks.

(c) There is recognition of the need to amend the definition of “associated person” in s. 1(2) of the *Regulations*.

Rationale: Given the question of which individuals can properly be the subject of a vulnerable sector check, when providing services and associated with an early learning and childcare centre, it is reasonable to re-examine the scope of the current definition of “associated person”, as set out in the *Regulations*.

ii. Features of Bill No. 129 that are respectfully submitted as requiring further consideration

Features of Bill No. 129 that are respectfully submitted as requiring further consideration are as follows:

(a) The provisions requiring criminal record and vulnerable sector checks in the case of applications for a certificate or renewal of a certificate.

Rationale: Sections 8(3)(e) and 10(1)(a) of the Regulations also require criminal record and vulnerable sector checks and those time periods for production should likewise be reduced from six months to one month prior to an application for a certificate or for a renewal application.

(b) The proposed definition of an “*associated person*” in s.1(c) of Bill No. 129 requires the deletion of some of the language and an expansion of categories in that definition to address potential situations where children may be at risk of being harmed.

Rationale: The definition of “associated person” in Bill No. 129 is too limiting and does not sufficiently consider several factors.

First, the list of categories under the definition of “associated person” is too limiting and should be expanded to include:

- an employee,
- an individual providing services on a contract,
- a volunteer, and
- a student on an educational placement,

In conjunction with this expansion of categories under the definition of ”associated person”, s.1(c)(ii) of Bill No. 129 should be deleted, which states “a staff member who reasonably expects to work at the centre while children are present.”

Secondly, as previously mentioned, there appears to be no caselaw interpreting the meaning of “the position is one of trust or authority towards that child or vulnerable person”, as set out in the federal *Criminal Records Act*. This means that there is room for the exercise of discretion, and the paramount concern should be protecting young vulnerable children in early learning and childcare centres from risk of harm.

Thirdly, the question of whether the individual is in a position of trust or authority should be a matter defined by the operator or employer in the specific job description and in the Vulnerable Sector requisition form – and not one determined or speculated upon by the employee or other associated person, as set out in Bill No. 129. In this regard, the *Saskatchewan Child Care Licensee Manual*, dated August 22, 2021, available at https://publications.saskatchewan.ca/#/products/76930, contains the following statement:

> *“**POLICY***
>
> *A vulnerable sector check is required as part of the criminal record search. To support the need for the check, job descriptions should indicate if a position is one of trust or authority over children or vulnerable persons.”*

Regardless of prescribed roles for childcare staff, childcare situations are fluid and there are times when specific individuals may have contact with a child due to proximity and unforeseen circumstances. There may also be individuals working on or off the premises, who may be predators and are using digital means to contact a child, or who have the ability to view the child’s records. For example, the *Child Care Licensing Handbook: Facility-Based Programs (*2021), published by the Alberta Government’s Children’s Services Ministry, available at https://open.alberta.ca/dataset/997f35bc-930d-44e5-b33b-a139087adc65/resource/387f6dc4-49c9-42ee-982e-7b5adba75ab5/download/cs-child-care-licensing-handbook-facility-based.pdf, states the following, at p. 20, about childcare facility applicants:

> *“To ensure the children who will be accessing your program are as safe as possible, you must submit a current criminal record check and vulnerable sector search for the individual applicant, corporate directors, corporate officers and any other current staff who will have access to children or the ability to view a child’s records.”*

Additionally, Newfoundland and Labrador Regulation 39/17 under the *Child Care Act*, available at https://www.assembly.nl.ca/legislation/sr/regulations/rc170039.htm

is very instructive for our purposes. In particular, subsections 16(1) and (2) of that Regulation not only provide a flexible and expansive response to the question of who is required to apply for a criminal record and vulnerable sector search in a child care facility, but also require those checks for individuals having contact with children (not limited to personal contact or on the premises of the facility) and access to the records of children at the facility - and of course that access to records can likewise take place remotely and off the actual premises of the child care facility.

"Requirements for employees, students and volunteers

> ***16.*** *(1) Unless otherwise provided for in the Act or these regulations, a person who is an employee, student or volunteer of a child care service provider or who assists or provides services in the operation of a child care service shall not have access to the records of the children who participate in the child care service unless a certified criminal records check or criminal records screening certificate, and a vulnerable sector records check for that person are*
>
> *(a) no more than 3 years old;*
>
> *(b) satisfactory to*
>
> *(i) the licensee of the child care service where the child care service is operated under a child care service licence, or*
>
> *(ii) the administrator of the child care service where the child care service is operated under an approval certificate; and*
>
> *(c) part of the personnel record required under section 47 for that person.*
>
> *(2) Unless otherwise provided for in the Act or these regulations, a person who is an employee, student or volunteer of a child care service provider or who assists or provides services in the operation of a child care service shall not have contact with the children who participate in the child care service unless the following requirements are met along with the requirements under subsection (1)…"*

(c) The title of staff requirements in section 4 should be removed, as well as the limiting language in that section.

Rationale: The requirements listed in section 4 should apply to all associated persons and not simply to staff members. The Rationale in the preceding discussion of who qualifies as an "associated person" also applies here.

(d) Bill No. 129 should include a provision requiring the *Early Learning and Child Care Act* to be applied and interpreted in a manner consistent with the United Nations Convention on the Rights of the Child.

Rationale: All the provisions of the *Early Learning and Child Care Act* and *Regulations* should be interpreted through a child rights lens.

(e) The definition of a "staff member" in s. 1(v) of the *Early Learning and Child Care Act* should be repealed.

Rationale: Given the expansion of the categories under the definition of an "associated person", there is no need to a retain a definition of a "staff member". The current definition is also confusing in that a person who works at a centre in a "volunteer capacity" currently falls under the definition of a "staff person", although volunteers are not generally regarded as staff members.

K) Recommendations

Recommendation #1 – That any amendments to the *Early Learning and Child Care Act* or the *Regulations* under that Act be based upon up-to-date fact-finding as to the extent of the problem, if any, with securing vulnerable sector checks for early learning and child care centres in other jurisdictions, as well as the actual scope of the problem in Prince Edward Island.

Recommendation #2 – That any amendments to the *Early Learning and Child Care Act* or the *Regulations* under that Act strengthen and not weaken the existing vulnerable sector search protections for children attending early learning and child care centres, having regard to the potential risk to such children of both personal and digital contact, whether frequent or situational, by persons providing services, or having access to those children's records.

Recommendation #3 - That any amendments to the *Early Learning and Child Care Act* or the *Regulations* under that Act include a provision that the Act and/or Regulations be construed and applied in a manner consistent with the United Nations Convention on the Rights of the Child.

Recommendation #4 – That the Department of Education and Lifelong Learning consult with the Office of the Child and Youth Advocate before moving to finalize any

amendments to the *Early Learning and Child Care Act* or the *Regulations* under that Act.

Conclusion

In conclusion, every child has a human right to protection from abuse and exploitation and government has a duty of care to take appropriate measures to ensure the protection, health and well-being of our youngest and most vulnerable citizens. Any erosion of preventative measures to keep children safe in their early learning and childcare environments is a step backwards and a serious blow to the advancement of children's rights in this province – something that I am sure none of us want to see – and most certainly not the caring and responsible parents and guardians of infants, toddlers and young children attending these facilities.

Respectfully submitted this 30th day of January, 2023, on behalf of the PEI Office of the Child and Youth Advocate by:

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